



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

ELP
Docket No. 4311-00
17 November 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 15 November 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Naval Reserve on 18 November 1993 for eight years at age 19. You were ordered to active duty on 20 December 1993 for a period of three years in the Airman Apprenticeship Program.

The record reflects that on 22 December 1993 you were retained in the Navy despite your fraudulent enlistment, specifically, for failure to disclose a March 1992 petty larceny conviction for which you received one year of probation. At that time, you were also briefed regarding the Navy's policy on drug and alcohol abuse and the consequences of illicit drug use.

Thereafter, you served without further incident until 14 February 1995 when you received nonjudicial punishment (NJP) for a 10 day period of unauthorized absence and use of marijuana. Punishment imposed consisted of forfeitures of \$427 per month for two months and 45 days of restriction and extra duty. On the same day, you

were notified that you were being considered for discharge by reason of misconduct due to drug abuse. You were advised of your procedural rights and that if the discharge was approved it could be under other than honorable conditions. You declined to consult with legal counsel and waived your right to an administrative discharge board (ADB).

On 16 February 1995 a medical officer evaluated you as non-dependent on drugs or alcohol. Thereafter, the commanding officer recommended you be discharged under other than honorable conditions by reason of misconduct due to drug abuse. On 27 February 1995 the Chief of Naval Personnel directed discharge under other than honorable conditions and assignment of an RE-4 reenlistment code. You were so discharged on 21 March 1995.

In its review of your application the Board carefully weighed all potentially mitigating factors such as your youth and immaturity and the fact that it has been five years since you were discharged. The Board noted your desire to become a police officer and your explanation that the misconduct which led to your discharge was the result of taking a "couple of hits off a joint" while on leave. You contend that when you returned to the ship, you felt guilty and reported what you had done to the command drug and alcohol program advisor (DAPA). You assert that you have not touched marijuana since your discharge. The Board concluded that the foregoing factors, contentions and assertions were insufficient to warrant recharacterization of your discharge given your record of a nonjudicial punishment (NJP) for use of marijuana and 10 days of UA. The Board noted the record clearly indicates that you knew the consequences of using marijuana or any other controlled substance. Your contention that you reported your drug usage to the command DAPA is neither supported by the evidence of record nor by any evidence submitted in support of your application. The Board also noted the aggravating factor that you waived an ADB, the one opportunity you had to show why you should be retained or discharged under honorable conditions. Your desire to be a police officer does not provide a valid basis for recharacterizing your service. Regulations require the assignment of an RE-4 reenlistment code to individuals discharged by reason of misconduct due to drug abuse. The Board concluded that the discharge was proper and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board.

In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director